

MICHAEL HOWARD REED
Name
04414-048
Prison Number
Federal Corr. Institution
P.O. Box 33
Terre Haute, IN 47808
Address or Place of Confinement

FILED
U.S. DISTRICT COURT
INDIANAPOLIS DIVISION
2015 JUL 13 PM 3:50
SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

Note: If represented by an attorney, write attorney's name, address & telephone number

United States District Court
SOUTHERN DISTRICT OF INDIANA

MICHAEL HOWARD REED.
Full Name (First, Middle, Last)

Petitioner,

vs.

LEANN LARIVA, Warden
Name of Warden
(or other authorized person having custody of petitioner)

Respondent.

2:15-cv-0212 JMS-MJD
CASE NO. (to be supplied by the Clerk of the
United States District Court)

re Case No.: 4:09-cr-00076

**PETITION FOR
WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241
BY A PERSON IN FEDERAL CUSTODY**

PLEASE COMPLETE THE FOLLOWING (check the appropriate number):

This petition concerns:

1. X a conviction
2. X a sentence
3. jail or prison conditions
4. prison discipline
5. a parole problem
6. other

CAUTION: If you are attacking a federal conviction, sentence or judgment, you must first file a direct appeal or motion under 28 U.S.C. § 2255 in the federal court which entered judgment.

PETITION

- (1) Place of detention: Federal Corr. Institution(CMU) Terre Haute
- (2) Name and location of court which imposed sentence: District of North Dakota
- (3) Offense(s) and indictment number(s) (if known) for the sentence imposed:
Title 18, U.S.C. §922(g)(2) and §924(a)(2) as well as a for-
feiture allegation; Title 28, U.S.C. §2461(c)
- (4) The date the sentence was imposed and the terms of the sentence:
23 April 2010; 18 months imprisonment; 24 months supervised
release - Has remained in continuous federal custody since
- (5) What was your plea (check one): Not guilty (X) Guilty () Nolo contendere ()
- (6) Kind of trial (check one): Jury (X) Judge only ()
- (7) Did you appeal from the judgment of conviction or the imposition of sentence: Yes (X) No ()
- (8) If you did appeal, answer the following for *each* appeal:

FIRST APPEAL:

Name of court: UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT

Grounds raised (list each):

1) Did Petitioner have possession of the weapon.

2) Was Petitioner a fugitive, as defined statutorily

Result/Date of result: CONVICTION AFFIRMED

SECOND APPEAL:

Name of court: UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT

Grounds raised (list each):

1) 18|3742: Competency to Represent Self.

2) _____

Result/Date of result: DISMISSED - ORDER CITED TIMELINESS

GROUND(S) FOR THIS 28 U.S.C. § 2241 PETITION

- (9) State *CONCISELY* every ground on which you claim that your sentence is being executed in an illegal manner. Summarize *briefly* the *facts* supporting each ground

CAUTION: If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

→ **GROUND ONE** SEE: ISSUE ONE SUPPLEMENT made a part herein by
this reference

Supporting *FACTS* for *GROUND ONE* (tell your story *BRIEFLY* without citing cases or law).

CAUTION: You must state *facts, not conclusions*, in support of your grounds. A rule of thumb to follow is -- who did exactly what to violate your rights at what time or place.

→ **GROUND TWO**

Supporting *FACTS* for *GROUND TWO* (tell your story *BRIEFLY* without citing cases or law).

ADMINISTRATIVE APPEALS

- (10) Have you presented the claims raised in Question #9 of this petition to prison officials in a prison administrations appeal?

Yes () No () If your answer is no, explain why not: _____

If your answer is yes, answer the following for *each* administrative appeal:

FIRST ADMINISTRATIVE APPEAL Level of appeal: _____

Grounds raised (list each):

- 1) _____
2) _____

Result/Date of result: _____

SECOND ADMINISTRATIVE APPEAL Level of appeal: _____

Grounds raised (list each):

- 1) _____
2) _____

Result/Date of result: _____

THIRD ADMINISTRATIVE APPEAL

Level of appeal: _____

Grounds raised (list each):

1) _____

2) _____

Result/Date of result: _____

FOURTH ADMINISTRATIVE APPEAL

Level of appeal: _____

Grounds raised (list each):

1) _____

2) _____

Result/Date of result: _____

- (11) Is the grievance process completed? Yes () No ()

PREVIOUS PETITIONS

- (12) Have you filed previous petitions for habeas corpus under 28 U.S.C. § 2241 or 28 U.S.C. § 2255, or any other applications, petitions or motions with respect to the claims raised in Question #9 of this petition?

Yes () No ()

- (13) If your answer to Question #12 was yes, give the following information for *each* previous petition:

FIRST PREVIOUS PETITION

Name of court: _____

Nature of proceeding: _____

Grounds raised (list each):

1) _____

2) _____

Result/Date of result: _____

SECOND PREVIOUS PETITION

Name of court: _____

Nature of proceeding: _____

Grounds raised (list each):

1) _____

2) _____

Result/Date of result: _____

- (14) If the claims raised in Question #9 of this petition concern your conviction or sentence, explain why you are filing your petition pursuant to § 2241 instead of § 2255.

(15) Are you presently represented by counsel?

Yes ()

No (X)

If so, provide your attorney's name, address, and telephone number:

(16) If you are seeking leave to proceed *in forma pauperis*, have you completed the application setting forth the required information? N/A

Yes ()

No ()

Note: If your answer is no, you must send a \$5.00 filing fee to the court with your petition.

WHEREFORE, petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Most respectfully,

06-23-2015

(Date)

Michael-Howard-Reed.

(Signature of Petitioner)

MICHAEL HOWARD REED, Pro se

(Signature of Attorney, if any)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

MICHAEL HOWARD REED,
Petitioner,

v.

Case No.:

UNITED STATES OF AMERICA,
Respondent.

28 United States Code §2241
re Case No.:4:09-cr-00076

ISSUE ONE SUPPLEMENT

FACTS AND PROCEDURAL HISTORY

On or about September 24, 2009, Petitioner was charged in a sealed Indictment, case number, 4:09-cr-00076, inter alia with possession of a firearm and ammunition by a fugitive from justice, in violation of, Title 18, United States Code, sections 922(g)(2) and 924(a)(2), as well as a forfeiture allegation, in accord with 28 United States Code, section 2461(c). He was arrested on 21 October 2009, in Clark County, Nevada and extradited to the District of North Dakota. On 20 November 2009, to face charges.

Petitioner vociferously plead not guilty and proceeded to trial, Pro-se, before the Honorable Daniel L. Hovland, Judge, United States District Court, District of North Dakota, Bismarck Division, from 25 January 2010 to 28 January 2010, wherein a jury returned a guilty verdict on all counts.

Despite motions for a directed verdict and acquittal, all of which were denied, Petitioner was sentenced on 23 April 2010, to eighteen months imprisonment, twenty-four(24)months of supervised release, and has remained in continuous federal custody, since his arrest. This Court has jurisdiction to hear and decide this matter. It is the controvention of Petitioner's "actual innocence" and blatant violations of his 6th and 14th Amendment, US Constitution Due Process rights and 8th Amendment liberty interests that make this motion ripe.

While in continuous federal custody and awaiting formal designation by the Federal Bureau of Prisons, Petitioner was indicted on new federal charges, case number, 1:10-cr-00041, inter alia with attempting to file false claims, the filing of false claims and liens, and aiding and abetting, all in violation of Title 18, United States Code, sections 1521 and 2. He was also

indicted, inter alia with endeavoring to influence or obstruct justice, pursuant to Title 18, United States Code, section 1503(a).

Subsequent to pleas of not guilty and vigorous trial contestation, a jury found him guilty of all counts and on 16 February 2011, he was sentenced to 108 months imprisonment, to run consecutive to case number 4:09-cr-00076 and additional supervised release.

Petitioner vociferously and categorically denied an essential element of his convicted offenses, mandated pursuant to Title 18, United States Code, sections 922(g)(s) and 924(a)(2), in that he was never convicted of a felony offense(emphasis added). Petitioner's prior records consist of the following:

(a) June 01, 1992, misdemeanor domestic violence, to which he was sentenced to a suspended term of (6)six months incarceration;

(b) March 15, 2006, misdemeanor possession of drug paraphernalia, to which he was sentenced to one year of probation, which was revoked and he was re-sentenced to a suspended term of one year in jail;

(c) November 6, 2008, misdemeanor conspiracy to violate the controlled substance act, to which he received 130 days imprisonment.

Consequently, he was both legally and factually innocent, as a matter of law. More importantly the district court effectively lacked jurisdiction over the offense and subject and his Honorable Court, must intervene judicially to reverse and remand Petitioner's conviction and sentence, in accord with 28 United States Code, section 2241(d)(i).

JURISDICTION

Actual Innocence, serves as a gateway through which a petitioner may pass whether the impediment is a procedural bar or expiration of the statute of limitations. McQuiggin v. Perkins, 133 S.Ct. 1924, 185 L.Ed. 1019; 2013 U.S. LEXIS 40118. No. 12-126, (May 28, 2013).

Please accept this letter brief in lieu of a more formal petition.


Under the Antiterrorism and Effective Death Penalty Act of 1996, 110 Stat. 1214, a petitioner has one year to file a federal petition for habeas corpus, starting from the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review. 28 U.S.C.S §2244 (d)(1)(A). In the case sub judice, actual innocence permits petitioner to pursue his Constitutional claims on the merits notwithstanding of a procedural bar to relief. Henceforth, this action pursues.

The actual innocence rule innures to prevent the fundamental miscarriage of justice exception and the equitable discretion of habeas corpus courts to see that federal constitutional errors do not(emphasis added), result in the incarceration of innocent persons. Petitioner is an innocent man and this most Honorable Court must act upon this grave injustice. Schlup v. Delo, 513 U.S. 298, 115 S.Ct. 851, 130 L.Ed. 2d 808(1995); House v. Bell, 547 U.S. 518, 536-537, 126 S.Ct. 2064, 165 L.Ed. 2d 1(2006).

Petitioner was wrongfully and erroneously convicted and, subsequently sentenced for an offense it was impossible factually and legally to commit; one he is "actually innocent" of. Devoid of any indicia of proof and a scintilla of evidence he had a prior felony conviction, statutorily and factually he should have never been arrested, charged, indicted, convicted and sentenced for an offense, he was incapable of being guilty of.

For the aforementioned reasons and because this actual issue has never been considered by any court, this Court must reverse the convictions.

Most respectfully,


MICHAEL HOWARD REED, Pro se
06-23-2015